IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2475 of 2007()

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AGAINST THE JUDGEMENT/ORDER IN CRRP.1195/2006 Dated 31/03/2006
CRA.96/2004 of SESSIONS COURT, TRIVANDRUM
C.C.235/01 OF JFCM COURT, VARKALA

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PETITIONER: REVN. PETITIONER/COMPLAINANT

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G.S.SUNIL,
VASANTHAVILASOM, PANAYARA, SREENIVASAPURAM,
CHEMMARUTHI VILLAGE.

BY ADV. SRI.VINOD J.DEV

RESPONDENTS: ACCUSED & STATE

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1. SIVADASAN PILLAI,
LEKSHMI BHAVAN, AYIROOR P.O., AYIROOR, VARKALA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.M.C.No. 2475 of 2007

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Dated this the 2nd day of August, 2007

**O R D E R**

The petitioner is the complainant in a prosecution under Section 138 of the N.I. Act. The first respondent herein is the accused. The first respondent has been found guilty, convicted and sentenced under Section 138 of the N.I. Act. The said verdict of guilty, conviction and sentence have now become final. The learned Judge in the order passed in the revision had given the parties time for four months to settle the disputes by making payments. No payment was made. Consequently the first respondent has now been sent to jail to undergo the default sentence, it is submitted.

2. The petitioner has come before this court with this petition. In the petition as also in the affidavit it is asserted that the entire amount of compensation has already been paid and discharged. The complainant asserts and accepts that the entire amount has now been received. The parties must hence have immediately gone to the learned Magistrate, report the fact of payment to the learned Magistrate and must have prayed for recalling of warrant of committal issued to compel the accused to undergo the default

sentence. The contestants, for obscure reasons, have not chosen to do that. They have chosen to come before this Court with the prayer that the default sentence may be set aside by invoking the powers under Section 482 Cr.P.C.

3. It is certainly for the parties to go before the learned Magistrate and apprise the learned Magistrate of the payment of amounts and the consequent need to recall the warrant of commitment issued to enforce the default sentence. Normally I would only have directed the parties to go to the learned Magistrate and make their submissions. It perturbs me to note that even after the admitted payment of the amount, the accused is continuing in custody. He does not deserve to continue in custody any longer. The parties have unnecessarily chosen to come before this court.

4. Be that as it may, I am satisfied that appropriate directions can be issued under Section 482 Cr.P.C.

5. This Crl.M.C. is allowed. The following directions are issued.

(1) The submission of the petitioner/complainant that the entire compensation amount of Rs.1,50,000/- has been received by him is accepted.

(2) The petitioner consequently is not liable to undergo any default sentence. He shall be released from custody forthwith.

(3) The Registry shall communicate these directions to the jail authorities and the learned Magistrate immediately.

**(R. BASANT)**
Judge

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